

Benjamin K. Riley (CA Bar No. 112007)
Briley@bzbm.com
BARTKO, ZANKEL, BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Telephone: (415) 956-1900
Facsimile: (415) 956-1152

Kerry L. Bundy (MN Bar No. 266917)
(*Pro Hac Vice*)
Kerry.Bundy@faegrebd.com
Aaron Van Oort (MN Bar No. 315539)
(*Pro Hac Vice*)
Aaron.VanOort@faegrebd.com
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600

Attorneys for Defendants
JANI-KING OF CALIFORNIA, INC.,
JANI-KING, INC., and JANI-KING
INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ALEJANDRO JUAREZ, MARIA JUAREZ,
LUIS A. ROMERO, and MARIA
PORTILLO, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

JANI-KING OF CALIFORNIA, INC., a
Texas Corporation; JANI-KING, INC., a
Texas Corporation; JANI-KING
INTERNATIONAL, INC., a Texas
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Exhibit 4

Case No.: 4:09-cv-03495-YGR

CLASS ACTION

**DECLARATION OF MICHAEL SEID
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION TO VACATE SUMMARY
JUDGMENT ORDER PURSUANT TO
NINTH CIRCUIT ORDER
REMANDING CASE FOR FURTHER
PROCEEDINGS**

Date: December 11, 2018
Time: 2:00 p.m.
Place: Courtroom 1
Judge: Hon. Yvonne Gonzalez Rogers

1 I, Michael H. Seid, declare as follows:

2 **Background and Qualifications**

3 1. I am the founder and Managing Director of MSA Worldwide (“MSA”), a
4 provider of domestic and international franchise advisory services. A true and correct copy of
5 my CV is attached as Exhibit A hereto.

6 2. I have provided testimony previously in this matter, in a declaration dated
7 August 13, 2010. I re-affirm and incorporate those opinions herein by reference. This
8 declaration will only repeat the portions of my prior declaration that are helpful in providing
9 context to the supplemental opinion I am providing here.

10 3. The facts contained in this declaration are within my personal knowledge, and I
11 could and will testify truthfully to those facts if called to do so under oath.

12 4. I make this declaration in support of Defendants’ Opposition to Plaintiffs’
13 Motion to Vacate Summary Judgment Order Pursuant to Ninth Circuit Order Remanding Case
14 for Further Proceedings.

15
16 **Scope of Declaration and Summary of My Opinions**

17 5. Jani-King of California, Inc. (“Jani-King”) has asked me to opine on franchising
18 as a distribution model, how franchisors structure and operate their franchise systems, and how
19 franchisors have relied on the independent contractor relationship between it and its franchisees
20 in operating in California.

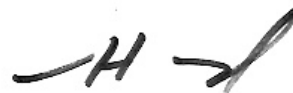
21 6. Based on my extensive experience in the franchise industry, the franchise
22 business model is (and always has been) based on an independent contractor relationship
23 between a franchisor and franchisee. Franchisors have relied on the well-known concepts found
24 in the Federal Trade Commission (“FTC”) Rules (promulgated in 1979) and the California
25 Franchise Investment Law (“CFIL”) (enacted in 1970) in structuring their relationship with
26 their franchisees in California, and in exercising the necessary controls to protect their brand
27 and goodwill as required by the Federal Lanham (Trademark) Act (enacted in 1948). In
28 consulting with franchisors on the set-up and execution of their franchise systems in California

1 of the franchisor's business and therefore was an employee of the franchisor. As the IFA has
2 noted, "The ABC test simply does not account for the symbiotic relationship that is at the heart
3 of franchising. This incongruence between the test and the day-to-day practices of franchise
4 systems creates an uncertainty among the franchise community, not to mention unnecessary
5 litigation." [https://www.franchise.org/franchisees-are-independent-contractors-but-not-as-
6 easy-as-%E2%80%9Cabc%E2%80%9D-in-some-states-0](https://www.franchise.org/franchisees-are-independent-contractors-but-not-as-easy-as-%E2%80%9Cabc%E2%80%9D-in-some-states-0)

7 24. I am familiar with the *Coverall* case and the impact it has had in the franchise
8 business community in Massachusetts. In the years since it was decided, the *Coverall* decision
9 has raised many questions for legitimate franchise businesses operating in, or considering
10 operating in, Massachusetts. As a leading treatise on franchise law noted, "franchise
11 practitioners were surprised to learn that a court had ruled a franchised business to be an
12 employee of the franchisor." 1 W. Michael Garner, *Employment Relationships, in Franchise &*
13 *Distribution Law & Practice* § 1:30 (2017). Franchisors I talked to have voiced similar
14 reactions to *Coverall*, and many of my clients today hesitate to enter into Massachusetts as
15 franchisors because of the uncertainty raised by the *Coverall* decision.

16
17 I declare under penalty of perjury under the laws of the United States that the foregoing
18 is true and correct.

19
20
21 Executed this 8th day of November, 2018, in West Hartford, Connecticut.

22
23 

24
25 _____
MICHAEL SEID

1 Benjamin K. Riley (CA Bar No. 112007)
rileyb@howrey.com

2 Emily L. Maxwell (CA Bar No. 185646)
maxwelle@howrey.com

3 Seth B. Herring (CA Bar No. 253907)
herrings@howrey.com

4 **HOWREY LLP**
525 Market Street, Suite 3600
San Francisco, CA 94105
Telephone: 415.848.4900
6 Facsimile: 415.848.4999

7 Kerry L. Bundy (MN Bar No. 266917) (*Pro Hac Vice*)
kbundy@faegre.com

8 Aaron Van Oort (MN Bar No. 315539) (*Pro Hac Vice*)
avanoort@faegre.com

9 Eileen M. Hunter (MN Bar No. 336336) (*Pro Hac Vice*)
ehunter@faegre.com

10 **FAEGRE & BENSON, LLP**
2200 Wells Fargo Center
11 90 South Seventh Street
Minneapolis, MN 55402
12 Telephone: 612.766.7000
Facsimile: 612.766.1600

13 Attorneys for Defendants
14 JANI-KING OF CALIFORNIA, INC., JANI-KING, INC.,
and JANI-KING INTERNATIONAL, INC.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 ALEJANDRO JUAREZ, MARIA JUAREZ,
LUIS A. ROMERO, and MARIA PORTILLO,
20 individually and on behalf of all others
similarly situated,

21 Plaintiffs,

22 v.

23 JANI-KING OF CALIFORNIA, INC., a Texas
Corporation; JANI-KING, INC., a Texas
24 Corporation; JANI-KING INTERNATIONAL,
INC., a Texas corporation; and DOES 1
25 through 20, inclusive,

26 Defendants.

Case No.: CV09-03495 SC

CLASS ACTION

DECLARATION OF MICHAEL H. SEID

Complaint filed: June 22, 2009

1 I, Michael H. Seid, declare as follows:

2 **My Background and Qualifications**

3 1. I am the founder and Managing Director of Michael H. Seid & Associates, LLC
4 ("MSA"), a provider of domestic and international franchise advisory services.

5 2. I graduated from Long Island University with a B.S. degree in Accounting in
6 1975. During the period 1970 through 1976, I was a member of the U.S. Army Reserves and
7 was honorably discharged in 1976 with the rank of Staff Sergeant. During the course of my
8 professional career, I have served at various times as a senior operations officer, financial
9 executive, consultant, and accountant for companies within the franchise, retail, restaurant,
10 hospitality, healthcare, education, and services industries. From 1987 through the present, I have
11 primarily been a consultant to the franchise industry.

12 3. I am a frequent speaker at programs for the International Franchise Association
13 ("IFA") and various other retail and professional organizations. The IFA is the oldest and largest
14 franchise association in the United States. Its members include both franchisors and franchisees.

15 4. I have lectured and written for the ABA Forum on Franchising and the IFA Legal
16 Symposium. I have lectured at several universities and law schools, including St. Thomas
17 University, Georgetown Law School, New York University School of Law, Benjamin N.
18 Cardozo School of Law, Nova University, the University of Arizona, Johnson & Wales
19 University, and MIT Sloan School of Management.

20 5. I have published numerous articles on franchising. I am the author of *Franchising*
21 *for Dummies*, 2nd Edition, published by Wiley Publishing, Inc. My co-author for *Franchising*
22 *for Dummies*, 1st Edition, was the late Dave Thomas, founder of Wendy's International.

23 6. I have consulted, both domestically and internationally, for companies on the
24 appropriateness of franchising, licensing, and other methods of downstream distribution of
25 products and services, as well as the design and development of franchise and licensing systems.
26 MSA and I have provided services in virtually every area of franchising, including franchise
27 sales programs, systems development, manuals, training programs, marketing, expansion

document and franchise contract and have an accountant review the company's financial disclosures. (Emphasis added.)

Lawyer and Accountant:

Investing in a franchise is costly. An accountant can help you understand the company's financial statements, develop a business plan, and assess any earnings projections and the assumptions upon which they are based. An accountant can help you pick a franchise system that is best suited to your investment resources and your goals.

Franchise contracts are usually long and complex. *A contract problem that arises after you have signed the contract may be impossible or very expensive to fix. A lawyer will help you to understand your obligations under the contract, so you will not be surprised later. Choose a lawyer who is experienced in franchise matters. It is best to rely upon your own lawyer or accountant, rather than those of the franchisor.* (Emphasis added.)

71. The information included by the FTC in their consumer guide regarding due diligence procedures, including their recommendations about contacting current and former franchisees and the engagement of professional advisors, are also included in one fashion or another in every book or article on the subject of franchisee investment I have read, including my own work, *Franchising for Dummies* 1st and 2nd editions.

72. Based upon my review of the Jani-King UFOC and my experience and expertise in franchising, it is my expert opinion that the Jani-King UFOC adequately makes the disclosure in plain English required by the FTC and UFOC guidelines.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 13, 2010

s/ Michael H. Seid
Michael H. Seid

DECLARATION OF SERVICE BY U.S. MAIL AND EMAIL

I am employed in the County of Hennepin, State of Minnesota. I am over the age of 18 and not a party to the within action. My business address is 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901.

On August 13, 2010, I served on the interested parties in said action the within:

DECLARATION OF MICHAEL H. SEID

by placing a true copy thereof in a sealed envelope(s) addressed as stated below.

Monique Olivier, Esq.
molivier@sturdevantlaw.com
Whitney Huston, Esq.
whuston@sturdevantlaw.com
The Sturdevant Law Firm, P.A.
354 Pine Street, 4th Floor
San Francisco, CA 94104

Mark Talamantes, Esq.
mark@e-licenciados.com
Jennifer A. Reisch, Esq.
Jennifer@e-licenciados.com
Talamantes Villegas Carrera, LLP
170 Columbus Ave., Suite 300
San Francisco, CA 94133

Shannon Liss-Riordan, Esq.
sliss@llrlaw.com
Hillary Schwab, Esq.
hschwab@llrlaw.com
Lichten & Liss-Riordan, P.C.
100 Cambridge Street, 20th Floor
Boston, MA 02114

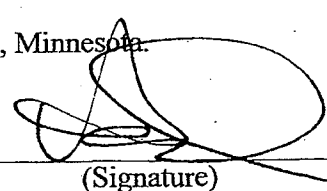
☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (EMAIL/ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the submission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 13, 2010, at Minneapolis, Minnesota.

Adam M. Nodler
(Type or print name)


(Signature)